

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JASON MCCLAIN,

Plaintiff,

v.

D. SCOTTINI,

Defendant.

No. 2:22-cv-1631 WBS CKD P

FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding pro se with an action for violation of civil rights under 42 U.S.C. § 1983. He alleges that on June 2, 2022, while he was a prisoner at California State Prison Sacramento, and while defendant was employed there as a correctional officer, defendant engaged in an act of sexual abuse directed at plaintiff. Plaintiff has filed a document which the court construes as a motion for summary judgment. ECF No. 34.

While not entirely clear, it appears that plaintiff asks that the court review certain documents which are mostly related to plaintiff's use of the California Department of Corrections and Rehabilitation inmate grievance process as to the claim presented against defendant. He also reiterates some allegations made in his complaint, makes some new ones, and then asks the court enter judgment in his favor.

Entry of summary judgment is only appropriate when it is demonstrated that there "is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

1 Fed. R. Civ. P. 56(a). A party asserting that a fact cannot be disputed must support the assertion  
2 by “citing to particular parts of materials in the record, including depositions, documents,  
3 electronically stored information, affidavits or declarations, stipulations (including those made for  
4 purposes of the motion only), admissions, interrogatory answers, or other materials. . .” Fed. R.  
5 Civ. P. 56(c)(1)(A).

6 Plaintiff does not assert that there is no genuine issue of material fact and does not cite  
7 evidence indicating a material fact cannot be disputed. Plaintiff’s allegations and request that the  
8 court review documents is not a basis upon which the court can enter judgment against defendant.

9 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff’s motion for summary  
10 judgment (ECF No. 34) be denied.

11 These findings and recommendations are submitted to the United States District Judge  
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
13 after being served with these findings and recommendations, any party may file written  
14 objections with the court and serve a copy on all parties. Such a document should be captioned  
15 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
16 objections shall be served and filed within fourteen days after service of the objections. The  
17 parties are advised that failure to file objections within the specified time may waive the right to  
18 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 Dated: May 7, 2024

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21 CAROLYN K. DELANEY  
22 UNITED STATES MAGISTRATE JUDGE  
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